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Let's Examine Exam Services

What does SPB's Exam Services Unit do for you? The answer is: a lot!

Exam Services provides on-line examination and certification services to all 152 state departments, boards, agencies and commissions. This includes training to utilize the on-line system, consultation, assistance and problem solving.

The unit also makes ongoing system enhancements. For instance, Exam Services recently designed an SPB system access process to make it easier for departmental employees to gain access to the on-line system, thereby taking SPB off the SCO system for daily transactions. Additionally, Exam Services has increased their on-line training capacity from 10 to 20 participants for each on-line examination and certification class.

Exam Services also provides reimbursable testing services for contracting agencies (currently 20 agencies) which includes all phases of test development and administration. These services assist departments in meeting their individual testing needs.

The unit is also charged with providing testing services for servicewide classifications and producing quality eligible lists for use by all departments. These testing services include exams for Staff Services Analyst, Office Assistant (Typing & General), Key Data Operator and testing for all LEAP classifications. Several of these examinations are being given on a continuous basis and all of the LEAP classes are either continuous or cyclical. Plus, within the last year,

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SPB administered its first set of automated exams for Information Technology classes with an Internet application filing. This allows candidates to provide narrative responses to specific questions and includes an independent system for rating of these exams.

Over the last several years, Exam Services has placed 24 examinations on the Internet, which includes filing of the application, a minimum qualification determination, ability to actually take the test and instantaneous scoring with a weekly addition to the eligible list.

The SPB Testing Center was also recently created by Exam Services. Candidates can utilize one of dozens of workstations available to take a computerized examination. The addition of the Testing Center has allowed SPB to automate a candidate filing and scheduling system via the Internet. With this system the applicant can apply, arrange their testing date, appear and be scored within a short timeframe.

Exam Services has also been instrumental in updating and automating the state application form, which is now available on the Internet.

Needless to say, SPB's Exam Services Unit is a busy operation with daily challenges that are handled with skill and commitment. Their quality efforts are appreciated by SPB and the many clients who benefit from their services. ■

On-Line Exam/Cert Training Facility Expanded

It is with great pleasure that we announce the expansion of the On-Line Exam/Cert training facility at the State Personnel Board. We have upgraded from "dumb" terminals to PC's, and doubled the training room capacity. We are now able to accommodate 20 participants per training class.

We also are happy to report that the expansion has enabled us to accommodate departments' on-line training needs and eliminate the waiting lists for on-line training.

Below are the dates available for the remainder of this calendar year. Next calendar year's classes and dates will be published in the next newsletter edition.

Seating is going fast! To register, please contact Bonnie Swinney at 653-0549, Calnet 453-0549, or via e-mail at bswinney@spb.ca.gov. ■

SPB ON-LINE TRAINING DATES

On-Line Certification
November 6-8, 2002

On-Line Examination
November 18-22, 2002

News from the Technical Training Program



The Technical Training Program is offering the Selection Analyst Training Program (Spring 2003 edition) in Sacramento. The first class in the series, "Job Analysis," will be held January 14 - 15, 2003. Schedule early to guarantee your registration in this and the other 11 classes. We do offer a 5% discount for pre-registration and payment of all 12 classes in the Selection Analyst Training Program.

The Selection Analyst Training Program offers a state-of-the-art, comprehensive instructional curriculum for the development of selection analysts. This program provides selection analysts, whether novice or experienced, the opportunity to increase and enhance their selection-related knowledge and skills. The classes have been designed to provide participants with fundamentally sound, legally defensible, innovative means of performing selection-related work. The Selection Analyst Training Program is comprised of the following classes:

CLASS	DATE
WRIPAC Job Analysis Course (2-day class)	January 14-15, 2003
Statistics Made Easy for Personnel Selection	February 4, 2003
Professional Selection & Test Validation	February 20, 2003
Examination Planning	February 25, 2003
Supplemental Applications	February 27, 2003
Developing Interviews	March 11, 2003
Chairing Interview Examinations (3-day class)	Jan., April, & May 2003
Work Sample and Performance Tests	March 19, 2003
Developing and Using Written Examinations	March 25, 2003
Interpreting Item Analysis	March 26, 2003
Pass Point Setting	March 27, 2003
Scoring Models	April 10, 2003

In addition to the hardcopy of the Schedule of Classes for July 1, 2002 - June 30, 2003, and our Web site at <http://www.spb.ca.gov/spbtrain/>, you can keep apprised of SPB activities, including Technical Training Program classes, at the SPB Outreach Calendar Web site at <http://www.spb.ca.gov/calendarrd.cfm>. If you prefer to have a hardcopy of the Schedule of Classes for July 1, 2002 - June 30, 2003, please contact us at the numbers listed in this article.

Your suggestions and comments regarding the Technical Training Program are always welcome. To let us know how we can best meet your training needs, contact Bill Groome at (916) 653-1597 or Karen Pack at (916) 653-2085, TDD (916) 654-6336, or at our e-mail address ttp@spb.ca.gov.

To register for upcoming classes please complete an SPB-46 Program Registration form. The form is downloadable from the web site in both Microsoft Word format and Adobe Acrobat format at <http://www.spb.ca.gov/spbtrain/registerd.cfm> or call us and we will FAX a blank form to you. FAX your completed Program Registration form to (916) 657-2502 and we will schedule you. We look forward to seeing you in one of our classes soon. ■

TV&C Corner



Changes...

Sadly, TV&C has lost one of its valuable staff members, Nicole Vaillancourt. We wish her good luck in her future endeavors. Mabel Miramon continues to serve as TV&C's Acting Supervisor and is bringing in new and exciting work for our unit. In addition, we are pleased to have Katy

Mohler-Fodchuk, our new Graduate Assistant, as part of our team. Katy has completed her Master's degree in I/O Psychology and is a great asset to TV&C. Welcome Katy!

Getting Technical with TV&C...

TV&C continues to offer its publication series for selection analysts and assessment professionals – Getting Technical with TV&C...The goal of Getting Technical is to discuss and explain some of the more technical aspects of assessment and measurement in an understandable and practical manner. The Spring 2002 edition of Getting Technical covers "Guidelines for Successful Written Exam Administration". While we know it is a bit late in coming, we believe that it is well worth the wait! The purpose of this monograph is to provide a general outline of helpful guidelines for efficient and consistent exam administration and proctoring. Considerations concerning exam materials, equipment, and the exam site are discussed. Guidelines concerning the actual administration of the exam are also presented. In addition, recommendations for maintaining exam security are presented throughout the monograph. This FREE publication is available in hard-copy format by contacting any member of TV&C staff. Upcoming monograph editions will cover the various ways in which job analytic data can be used, not only for selection procedures, but for a variety of human resource projects as well. Item writing techniques will also be re-addressed as this topic is always of help for those of us in selection and assessment. Look for these upcoming editions in the Fall 2002 and Spring 2003.

Upcoming Professional Development Opportunities...

Western Region Intergovernmental Personnel Assessment Council (WRIPAC) will hold its next meeting and training seminars January 29-31 in San Diego. The September 2003 WRIPAC meeting may be held in Yosemite...details will be provided when dates and costs are solidified. PTC/NC (Personnel Testing Council of Northern California) will be welcoming Ines Vargas-Fraenkel, a Supervising Trial Attorney for Oakland's City Attorney's Office. She will present a legal update on key issues in testing and selection and more general updates on labor and employment on November 15, 2002. This presentation will include the Zottola vs. City of Oakland (disparate impact and treatment case brought by a white male) which has proceeded through the 9th Circuit Court of Appeals. Ms. Vargas-Fraenkel serves as the lead defense attorney for the City of Oakland in this high profile case. Contact Mabel Miramon, at (916) 653-1401 for more information about any of these upcoming events.

TV&C staff continue to be available to assist you with a variety of testing and selection topics, so if you have questions, concerns, or issues with which we can assist, please don't hesitate to call upon us – we are only a phone call or e-mail message away. ■

Questions, comments
or suggestions about
Shared Solutions can
be directed to:

Evan Gerberding

Phone: (916) 657-2904

E-mail address:

egerberding@spb.ca.gov

Mabel Miramon (916) 653-1401
mmiramon@spb.ca.gov

Hilary Tuttle (916) 651-8176
htuttle@spb.ca.gov

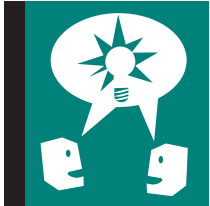
Karl Jaeger (916) 653-1143
kjaeger@spb.ca.gov

Katy Mohler-Fodchuk (916) 651-8417
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TV&C webpage address:
<http://www.spb.ca.gov/tvchome.htm>

Test Talk

A Professional Development Program



The Test Validation and Construction (TV&C) Unit continues to offer *TestTalk*, a lunch-hour, drop-in

program providing testing professionals with opportunities to expand their

testing expertise, share ideas, and network with other testing professionals. The *TestTalk* 2002 topics and dates are listed below.

All *TestTalk* sessions are held at the State Personnel Board, 801 Capital Mall, Room 150. No registration is necessary to attend any of these sessions. For more information on this program or to provide us with topic ideas, contact Mabel Miramon at (916) 653-1401. ■

Date	<i>TestTalk</i> 2002 Topics
11/13/02	Interpreting the Bottom Line: What Test Results Really Mean

SPB Co-Sponsors the 13th Annual Refugee Conference

“America: Our New Home” was the theme for the 13th Annual Refugee Conference. Many state departments took advantage of this opportunity to provide valuable information about the services they offer to California’s refugee population. The conference was held in San Diego September 3 – 6, 2002 at the San Diego Marriott and Marina and was sponsored by the Department of Social Services. The event was well attended by more than 200 community based organization leaders from the entire state of California as well as other states. The primary goal of the conference was to give refugees a sense of self-sufficiency and self-reliance. Once a year, these refugees come together to share, learn and experience the valuable services available to them and their communities.



The SPB was proud to once again not only have an exhibit distributing information on current job openings, “How to get a Job with the State”, LEAP information and other valuable employment information, but also presented a workshop to over 50 attendees. The workshop focused on the SPB Web site and allowed attendees to experience the array of information literally at their fingertips by navigating the SPB Web site.

Although the number of refugees arriving in California has been declining, the countries of origin are becoming more diverse. By attending the Refugee Conference, state departments are able to witness this diversity first hand and meet

potential customers. Departments in attendance had translated information available for community leaders to take and distribute at their various offices. The Department of Motor Vehicles was very popular, offering the Driver’s Handbook in Chinese, Vietnamese, Spanish, and Korean. Other departments included Department of Child Support, California Highway Patrol, Department of Developmental Services, Managed Risk Medical Insurance Board, Department of Health Services, California Arts Council, Employment Development Department, Department of Alcohol and Drug, and Department of Aging.

Over 25 workshops were offered, providing valuable tools to enable refugees to become independent. This year’s theme was fitting and provided opportunities to work together in creating a welcoming environment for refugees in California. The events of 9/11 were a bittersweet reminder of what America means to all in attendance. If you would like to know how you can be a part of the Refugee conference next year, contact the Department of Social Service Refugee Branch at (916) 654-4356. ■

New Automated Discrimination Complaint Reporting System



Hurrah! Gone are the days of tedious, manual paper-work required to report

quarterly discrimination complaint activity to SPB! The first phase of SPB's new automated discrimination complaint reporting system was unveiled and presented to approximately 120 departmental employees who attended one of six training sessions given August 21-23. The system makes it easy and convenient for departments to input and update their discrimination complaint cases, and also assists SPB in reporting more accurate discrimination complaint activity and cost information to the Governor and Legislature.

All departments were instructed to begin using the system for the first

quarter of fiscal year 2002 (July 1-September 30, 2002) beginning with any discrimination complaint activity they had from July 1, 2002 or later. Case history (including pending cases) for all departments that was previously reported to SPB will be transferred from SPB's old database into the new system soon. Departments will be notified via e-mail when the transition is completed.

Stay tuned for Phase II of the system. This phase will enable departments to generate administrative reports based on their individual department's discrimination complaint activity and allow SPB to generate individual and statewide informational reports.

If you have questions or comments about the new system, you may call Judy Callahan at (916) 653-1621 or e-mail dcg@spb.ca.gov ■

Count Down for Appeals

Numbers! Numbers! Check out the numbers!

OK, it's not the lottery, but the numbers blazing out of Appeals are enlightening appellants and agencies alike. From the Appeals Board to the California Highway Patrol, printing to furnishings, the division responds to a cinched budget in diverse ways with creative solutions. Each instance is supported by real numbers.

- A record 117 cases set for the October 8-9, 2002 Board Meeting will significantly resolve a case backlog that has plagued the department for some time. Cheers for Bea Bailey's team from analysts to the Secretariat who strained to review, proofread, and prepare the cases for final Board review.
- How to do more with less? Using the technology already available in the Board's print shop, Board meeting materials were reconfigured, automated and then implemented by Steve Weaver, our digital printing genius. Secretariat's burden of manually arranging binder sections has been significantly reduced, and the Board Calendar is now more reader friendly.
- "Oh, now I understand," said a CHP officer clutching Appeals Case Tracking System (ACTS) generated reports handed out by Gladys Washington at recent meetings in San Diego and Sacramento. The actual case numbers reported by ACTS showed very few Board-

New Name, Same Service

The division formerly known as PRIDe has changed its name! Please allow SPB to proudly introduce the Merit Employment and Technical Resources Division (METRD). This new name was adopted to more accurately reflect the programs, processes and services the division provides. These include Servicewide

Examinations, Reimbursable Exam Services, On-line Examination and Certification Services, CEA Assignments and Board Items, Bilingual Services, Recruitment and Employment Services, Technical Training, Test Validation and Construction, and the Civil Rights Program. ■

Legislative Update



AB 1950 (Wright) authorizes a state agency to enter into an agreement with a probationary employee,

subject to the approval of the State Personnel Board, to extend the employee's probationary period for up to six months, in order to provide a reasonable accommodation to the employee and allow that employee to demonstrate, before the probationary period ends, the ability to perform satisfactorily the essential functions of the position.

Status: Signed Chaptered #236-02

AB 2034 (Horton) amends the Reporting by Community College Employees of Improper Governmental Activities Act (Education Code 87160 et seq.) to specify that the State Personnel Board is authorized to charge those costs associated with SPB hearings conducted as a result of whistleblower retaliation complaints filed with the SPB by community college employees, to the local community college district employing the complaining party, and that the Board of Governors of the California Community Colleges shall not be charged such costs.

Status: Signed Chaptered #81-02

AB 2268 (Horton) would; (1) inform dismissed state employees of the requirements for gaining re-entry into the state's workforce; (2) require state agencies to create a pool of trained supervisory employees to act as Skelly Officers to conduct pre-disciplinary

reviews of adverse actions; (3) prohibit a supervisor or manager to act as a Skelly Officer for a disciplined employee in the same department; (4) require state agencies to track and report to the Legislature the costs incurred in connection with litigation of discrimination cases; (5) provides that each department's equal employment opportunity officer shall report directly to the department's director.

Status: Vetoed by Governor

AB 2850 (Firebaugh) requires state agencies to provide prior notice to the designated representatives of State Employees Bargaining Unit 2 (CASE) of all legal services contracts that state agencies seek to enter into. Requires the Attorney General provide notice to CASE of all legal contracts to which the AG has consented, and the Department of General Services to provide notice to CASE before approving any legal contract.

Status: Vetoed by Governor

AB 2892 (Horton) the bill overrules the California Supreme Court's decision in Johnson v. City of Loma Linda (2000) 24 Cal.4th 61 and the Appellate Court's decision in Schifando v. City of Los Angeles (2000) 97 Cal App.4th 312, and allow state employees, who have been disciplined by their appointing powers for misconduct, to split their causes of action and seek two separate trials: the first before the State Personal Board to review the disciplinary action, and the second before a state court to assert discrimination in that disciplinary action under California's Fair Employment

and Housing Act.

Status: Vetoed by Governor

SB 43 (Polanco) establishes the State Civil Service Equal Employment Opportunity Program (Program) and assigns to the State Personnel Board the responsibility for providing statewide program leadership, coordination, monitoring and enforcement of the Program.

Status: Vetoed by Governor

SB 987 (Escutia) amends the Dymally-Alatorre Bilingual Services Act (Act) to; (1) revises the Act's criteria for determining when a state agency must provide bilingual services to non-English-speaking people; (2) requires state agencies to survey their local offices every two years regarding their provision of the bilingual services; (3) requires state agencies to develop plans to implement the Act; (4) requires the SPB to review the agencies' surveys and implementation plans and report the results to the Legislature every two years; and (5) authorizes SPB to hold hearings, adopt regulations and take such other actions as it deems appropriate to effectuate the purposes of the Act.

Status: Vetoed by Governor

SB 1045 (Polanco) this bill reaffirms diversity as a public policy goal in public contracting and employment and makes findings as to the scope of permissible outreach efforts that state agencies may conduct to ensure that the state's workforce remains diverse.

Status: Signed Chaptered #1165-02 ■

Precedential Decisions

SPB Dec. No. 01-04

Appellant was dismissed by his former state employer. During his appeal before SPB, appellant and his former state employer reached a settlement agreement by which: (1) appellant's former state employer agreed to withdraw the adverse action; (2) appellant agreed to withdraw his appeal; and (3) appellant agreed to voluntarily resign. Thereafter, appellant sought state employment with a new state employer. On the state application, appellant answered "no" to the question asking him, among other things, whether he had ever resigned from a position during an appeal from a disciplinary action. When appellant's new state employer learned of his settled dismissal, it dismissed him for fraud in securing his appointment for failing to disclose the prior adverse action on his state application. Appellant appealed his dismissal to SPB.

In this decision, SPB concluded that the new state employer did not prove that appellant was dishonest when he completed his state application and therefore, revoked appellant's dismissal. SPB found further that the old state application should be revised to ask only whether an applicant has ever been dismissed or terminated from any position for performance or disciplinary reasons, and should be clarified to provide that an applicant who had received a dismissal that was subsequently withdrawn, whether as part of a settlement agreement or otherwise, need not disclose the dismissal on the application. The new state application includes the changes mandated by this decision.



SPB Dec. No. 02-01

The appellants in this case submitted to SPB stipulated settlement agreements that settled their respective disciplinary actions and sought SPB's approval of those agreements pursuant to Government Code §18681. Each of the appellants was a member of a bargaining unit that was governed by a memorandum of understanding (MOU) that provided for the review of disciplinary actions by a grievance and arbitration process that excludes SPB.

In this decision, SPB found that appellants in bargaining units with such MOUs, who ask SPB to approve their settlement agreements, must include, either in their agreements or in separate declarations, language that provides that their disciplinary actions have not been subject to, submitted to, or settled by any process for review other than that provided by SPB. The specific language that the settlement agreement or declaration must contain is set forth in the decision.

SPB DEC. NO 02-02

The appellant filed an appeal with SPB from constructive medical termination after her state employer refused to return her to work in response to her request, because the appellant had been declared to be a "qualified injured worker" in her workers' compensation action.

In this decision, SPB determined that the state employer was obligated to return the appellant to work upon her request. If the state employer was concerned that the appellant could not perform all the essential functions of her position, it should have entered into an interactive process with her to determine whether she needed a reasonable accommodation to perform those functions. As part of that interactive process, the state employer could have sent the appellant for a fitness for duty examination to determine her functional limitations and whether those limitations could be overcome with a reasonable accommodation. The Board found that, by denying the appellant's request to return to work without following the procedures set forth in Government Code §19253.5 and Board Rule 52.3, the state employer constructively medically terminated her.

SPB Dec. No. 02-03

The appellant, a permanent intermittent employee, was ordered off work while the department conducted an investigation into patient abuse. After conducting the investigation, the department did not charge appellant with patient abuse, but gave him an

California Civil Rights Officers Council

The California Civil Rights Officers Council, better known as CCROC, is comprised of Equal Employment Opportunity (EEO) Analysts, EEO Officers, Civil Rights Officers, Affirmative Action Officers, and other Human Resources professionals. The Council's mission is to: "Ensure that the equal employment opportunity principles and legal mandates are effectively implemented in California state agencies."

The CCROC vision statement is: "CCROC is committed to ensuring nondiscrimination in civil service by providing California's civil rights staff with the comprehensive program guidance to achieve both professional and program excellence. Our program reflects our values."

The values of the CCROC are Quality, Courage, Integrity and Respect.

You are probably asking yourself, "How can I find out more about this group?" "How can I attend?" Meetings are open to all EEO officers or designated EEO/affirmative action/civil rights staff. All you need to do is contact Robin Corralejo, Chairperson of the Council, at Robin_Corralejo@calpers.ca.gov to be placed on CCROC's EEO officer or EEO staff mailing list for e-mailed notices of upcoming CCROC meetings. No membership fee is required to attend the meetings.

Beginning in August 2002, "General" or "All CCROC" meetings are held once every month in the CalPers

building at Lincoln Plaza on 400 P Street in Sacramento. The meeting agenda varies each month depending on what topics are of particular interest to the majority of attendees. Agendas include standing informational items, training opportunities, best practices, and legal and legislative updates. Most meetings include speakers who are considered to be experts in their respective areas.

Meetings are held from 9:00 a.m. until noon on every third Friday of the month and include time to network with others.

Once you are on the CCROC or EEO officer/EEO staff mailing list, you will be e-mailed a notice in advance of the meeting notifying you of the room number where the meeting will be held and providing you with an agenda.

Please mark your calendars and plan to learn something new, share best practices, and network with other EEO professionals. Once you attend, you will truly see the CCROC vision that "Our program reflects our values." ■



The upcoming meeting schedule for CCROC is as follows

November 15, 2002

December 6, 2002

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official reprimand on an unrelated charge. The appellant asked the Board to award him back-pay for the period of time he was ordered off work while the investigation was pending.

In this decision, the Board determined that, under the facts of this case, the appellant established that he was placed on involuntary administrative leave pursuant to Government Code §19574.5 and that, but for that leave, he would have worked a sufficiently definite number of hours so as to be entitled to an award of back pay.

SPB Dec. No. 02-04

After the appellant was rejected on probation by his state employer, he exercised his mandatory reinstatement rights to his former position with his former state employer and filed an appeal with SPB from the rejection. During the appeal, the appellant and his state employer reached a settlement agreement pursuant to which appellant agreed to voluntarily resign from his position and his state employer agreed to withdraw the

notice of rejection. The appellant's former employer asserted that, as a result of the settlement agreement, the appellant lost his mandatory reinstatement rights to his former position.

In this decision, SPB found that the appellant had effectively exercised his mandatory reinstatement rights to his former position and those rights were not thereafter nullified or invalidated by a settlement agreement that provided that the notice of rejection had been withdrawn.

SPB Dec. No. 02-05

The appellant was rejected during his probationary period. The appellant's probationary period was supposed to end on August 31, 2001. On August 30, 2000, the department mailed a notice of rejection to appellant's home address. The notice informed the appellant that his rejection during probation was to be effective at the close of business on September 11, 2000, and that, "in accordance with Government Code Section 19173 and State Personnel Board Rule 321(c), your probationary period is being extended through the close of business on September 11, 2000, to allow for the full notice period required by State Personnel Board Rule 52.3."

In this decision, SPB stated that, under Board Rule 321(c), a probationary period may be extended only to afford an employee five working days' notice prior to the effective date of the rejection, so that the employee may request and receive a Skelly meeting. No matter how or when the employee is served with a notice of rejection, the employee's probationary period cannot be extended beyond the five

working day notice period contemplated by Board Rule 52.3. Because the appellant's probationary period concluded on August 31, 2000, the department was entitled to extend the appellant's probationary period five working days, but in no event to a date later than September 8, 2000. Since the appellant's rejection did not become effective until after September 8, 2000, SPB revoked it as untimely. The department has filed a petition for writ of mandate in court with respect to this decision.

SPB Dec. No. 02-06

The appellant, a diabetic, asked his state employer for reasonable accommodation to stay in his existing location, in order to remain close to his doctor, when his unit was relocated to another location. The appellant appealed to SPB when his state employer denied his request for reasonable accommodation. The administrative law judge (ALJ), who heard the case, issued a proposed decision granting the appellant's appeal, finding that the department had illegally denied his reasonable accommodation request. SPB adopted the ALJ's proposed decision as its own decision.

The appellant filed a petition for rehearing, which informed SPB that, as a result of his diabetes, he was not able to return to work and asked SPB to reopen this matter to take additional evidence as to the appellant's compensatory damages.

In this decision, SPB determined that, when an employee files an appeal from a department's denial of a reasonable accommodation request, SPB will automatically consider that appeal to be a disability discrimina-



tion appeal under Government Code §19702, subject to all the remedies available under subdivision (f) of that section, including an award of compensatory damages, even if the appeal does not explicitly mention the term “disability discrimination” or refer to Government Code §19702. SPB, however, denied the appellant’s request to reopen the case to take additional evidence as to compensatory damages, since the appellant had failed to raise this issue before the ALJ.

SPB Dec. No. 02-07

This case addressed two Skelly issues. First, the notice of adverse action was signed by an individual on behalf of the warden. That individual also acted as the appellant’s Skelly officer. In this decision, SPB found that the fact that the individual signed the notice of adverse action and then acted as the Skelly officer violated the impartiality standard set forth in Skelly.

Second, the appellant contended that a set of documents discussing and comparing the penalties imposed by the department on other employees who received adverse actions (the “comparables documents”) were reviewed by the ultimate decision maker and should have been included among the materials provided with the notice of adverse action. The department contended that, because those documents had no bearing on the decision to take adverse action, but only on the level of penalty to be imposed, they were not part of the materials that it was obligated to provide under Skelly. The department also contended that, because the Skelly officer did not review those documents, they were not required to be provided. In this decision, SPB found that, assuming that the

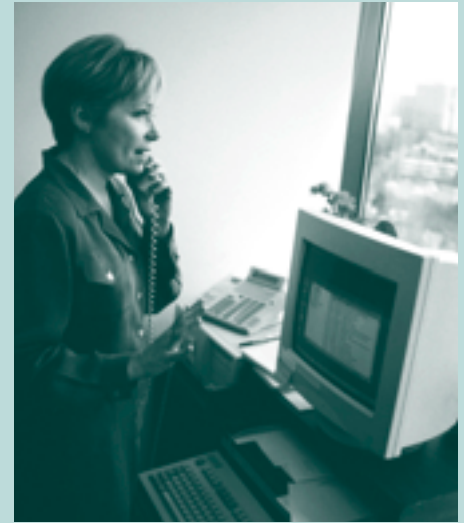
appellant was able to establish that the decision maker actually was provided with those documents in connection with making the initial decision to impose discipline, they would constitute “materials upon which the adverse action is based” that had to be provided to the appellant prior to the effective date of the adverse action.

SPB Dec. No. 02-08

The appellant filed an age discrimination appeal with SPB asserting that she was denied a promotion because of her age.

In this decision, SPB adopted the McDonnell Douglas framework for reviewing discrimination cases. That framework allocates the burdens of proof and production in a discrimination case as follows: (1) first, the complaining employee must prove a prima facie case of discrimination by a preponderance of the evidence; (2) if the complaining employee proves a prima facie case, the burden shifts to the appointing power to produce evidence of a legitimate, nondiscriminatory reason for the adverse employment decision; (3) if the appointing power carries this burden, the burden shifts back to the complaining employee to show that the appointing power’s proffered reason was not its true reason, but, instead, a pretext for discrimination. Although this framework shifts the burden of production to the appointing power after the employee establishes a prima facie case, the ultimate burden of proving that the appointing power engaged in illegal discrimination remains with the complaining employee.

In this case, SPB decided that the appellant had established a prima facie case of age discrimination, and



remanded the matter for further hearing to permit the department to produce evidence of a legitimate, nondiscriminatory reason for not promoting appellant, and the appellant to rebut any evidence that the department might submit.

SPB Dec. No. 02-09

Within one-year after commencing an investigation into alleged wrongdoing, the department served a letter on the appellant, a peace officer, notifying him that the department intended to take adverse action against him. The department did not, however, serve a formal notice of adverse action upon the appellant within that one-year period.

In this decision, SPB found that Government Code §3304(d) requires a state department to serve a formal notice of adverse action upon any peace officer accused of misconduct within one-year of the date of discovery of that misconduct by a person authorized to initiate an investigation into the wrong-doing. Because the department failed to comply with this statutory limitations period, SPB revoked the disciplinary action. ■

Biennial Language Survey in Bilingual Services



The SPB has received most of the language surveys from state departments that participated in the Biennial

Language Survey. This survey is mandated by Government Code Section 7290-7299.8 Dymally-Alatorre Bilingual Services Act (Act). Due to the creation of the Bilingual Services Program and new technology, the SPB is developing comprehensive bilingual reports of each of the 83 participating state departments.

The language survey is designed to determine the number of public contact positions in each local office, the number of designated public contact positions by languages, and the percentage of non-English-speaking people served by local offices (broken down by languages). Departments will also report the anticipated vacancies in public contact positions and usage of contracted telephone based interpretation services, according to the Act. This data is used



to assist departments in looking at their organization unit by unit and determining if they have any bilingual position deficiencies. If there are deficiencies, then departments can develop strategies to correct these deficiencies and ensure that Limited English Proficient clients are provided equal access to state services.

Once SPB completes its analysis of the data provided by departments, a report will be developed for the Legislature in the Fall of 2002.

If you have any questions regarding the language survey, feel free to call Juana Lopez-Rodriguez of the Bilingual Services Program at (916) 653-1721. ■

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granted Withhold cases. "They were so excited to receive something—a report," said Washington. "Generally, their comments were positive about the Boards' process," she said. Once she gave them the numbers, she momentarily lost their attention.

- While the Department of Education moved uptown to posh new offices, Kerrie "wanna buy a bridge" De La Cruz-Peterson snagged their near-new modular furniture for Appeals' Intake and Calendar units. Talk about being neighborly. That's creative, cost free acquisition!
- Finally, Appeals' numbers were recently increased by one: Sharon Culton-Rodriguez, Legal Supervisor for Calendaring and Intake. As supervisors go, she is a ten.

The forecast: expect increasing numbers of appeals, declining daylight hours and shrinking budgets. In this current atmosphere, we are all affected and can anticipate continuous review of the appeals processes within the division as we strive to deliver service with shrinking resources. ■

Whom Should I Contact?

Subject	Contact Person	Phone	E-Mail
Access to Item Bank or Exam Library	Mare Tennison	654-5844	mtennison@spb.ca.gov
Access to On-Line Cert/Exam & Exam Service	Rosemarie Lopez	653-0904	rlopez@spb.ca.gov
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CEA Allocations, Non-hearing Board Calendar, Resolutions	Pat Embly	657-2389	pembly@spb.ca.gov
CEA Examination Recordings	Irene Riego	653-1705	iriego@spb.ca.gov
Cert, List Usage & Veterans Points	Sandra Stevens	653-1502	sstevens@spb.ca.gov
Civil Rights Office	Ted Edwards	653-1276	tedwards@spb.ca.gov
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Demonstration Projects	Elizabeth Montoya	654-0842	emontoya@spb.ca.gov
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Information Technology Access & Scanning Services	Victor Mendoza	653-6234	vmendoza@spb.ca.gov
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Policy Issues on: Exams/Appointments/ Separations	Rosie Jauregui Margaret Serenity	653-1827 653-0108	rjauregui@spb.ca.gov mserenity@spb.ca.gov
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Registration for Technical Training	Karen Pack	653-2085	kpack@spb.ca.gov
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